

25 November 1946

MEMORANDUM FOR THE EXECUTIVE FOR PERSONNEL AND ADMINISTRATION

Subject: Proposed Employment of [REDACTED]

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OGC HAS REVIEWED.

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1. [REDACTED] has suggested that this office point out the pertinent statutes concerning the employment by the Government of retired Army and Navy officers and the application and interpretations of such statutes. These statutes are as follows:

5 U.S.C. 59a provides in effect that no person holding a civilian office of, or position appointive or elective under the United States Government, shall be entitled during such incumbency to retirement pay from the United States for or on account of services as a commissioned officer in any of the services mentioned in Title 37 of the U.S.C., which includes the Army, Navy, Coast Guard and Marine Corps, at a rate in excess of an amount which when combined with the annual compensation of such civilian office makes the total rate from both sources more than \$3,000; and, when the retired pay exceeds the rate of \$3,000 per annum, such person shall be entitled to the pay of the civilian office or the retired pay, whichever he may elect. Section 59b exempts commissioned officers retired for disability incurred in combat with an enemy of the United States or for disabilities resulting from explosion of an instrumentality of war in line of duty. ¶ Section 62, Title 5 U.S.C. provides as follows:

"No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand and five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specially authorized thereto by law; but this shall not apply to retired officers of the Army, Navy, Marine Corps, or Coast Guard whenever they may be elected to public office or whenever the President shall appoint them to office by and with the advice and consent of the Senate. Retired enlisted men of the Army, Navy, Marine Corps, or Coast Guard retired for any cause, and retired officers of the Army, Navy, Marine Corps, or Coast Guard [who have been retired for injuries received in battle or for injuries or incapacity incurred in line of duty] shall not, within that meaning of this section, be construed to hold or to have held an office during such retirement."

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Executive for P & A

-2-

25 November 1946

2. You will note that 59a enables a retired Army officer receiving retired pay in excess of \$3,000 to elect to receive either the pay of his civilian office or his retired pay. Section 59b exempts those officers whose retirement is for disability incurred in combat. In the absence of specific statutory authority, Section 62 prohibits an Army officer retired for reasons other than injuries received in battle or injuries or incapacity incurred in line of duty and receiving retired pay equal to \$2500 per annum or more from holding any other office to which compensation is attached. The restriction of Section 62 does not apply when such retired Army officer is elected to public office or if the appointment is by the President, by and with the consent of the Senate. It appears that the restriction of Section 62 is directed at the individual to be employed as well as the Government agency contemplating employment of such individual.

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3. Therefore, in the case of [REDACTED] it appears that if he is retired purely on the basis of length of service he would be prohibited from accepting employment with the Central Intelligence Group. However, if [REDACTED] is retired by reason of incapacity incurred in the line of duty, the restriction of Section 62 would not apply. In any event, the provisions of 59a remain in force and [REDACTED] would be required to make an election of which pay he will receive, since it is understood his retirement pay would exceed \$3000 per annum.

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4. Your attention is invited to Public Law 718 - 79th Congress, 2d Session, approved 10 August 1946, which authorizes the Veterans' Administration to appoint and employ retired officers (including Army officers) notwithstanding Section 62 of Title 5 U.S.C. quoted above. However, retired officers so appointed or employed are expressly retained within the restrictions of 5 U.S.C. 59a. The authority contained in this Act is effective for a period of five years from the date of enactment. This Act is an example of specific statutory authority required to waive the provisions of Section 62.

5. It is suggested that the above-mentioned statutory restrictions be brought to the attention of [REDACTED] in order that he might have a clear understanding of the situation. If there are further questions on this subject, this office will be glad to discuss the case at your convenience.

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cc: [REDACTED] 25X1A

LAWRENCE R. HOUSTON
General Counsel